

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Scott Johnson,
Plaintiff,
v.
**San Carlos Inn, a California
Limited Partnership,**
Defendants.

Case: 3:19-cv-00061-SK

Plaintiff's Objection to and Opposition to Motion for Judgment on the Pleadings and Dismissal for Lack of Subject Matter Jurisdiction

Date: November 25, 2019
Time: 9:30 a.m.
Ctrm: C-15th Floor

TABLE OF CONTENTS

3	TABLE OF CONTENTS.....	i
4	TABLE OF AUTHORITIES.....	ii
5	MEMORANDUM OF POINTS AND AUTHORITIES	1
6	I. Preliminary statement.....	1
7	II. The motion for judgment on the pleadings or to dismiss for	
8	lack of standing violates General Order 56.....	2
9	III. Not only is should the Rule 12(b)(1) motion be treated as a	
10	Rule 12(b)(6) motion (stayed by General Order 56) but	
11	even if the stay were not in effect, this motion would be	
12	premature.....	4
13	IV. Rather than this improper attempt to get the court to make	
14	factual findings or resolve disputed issues <i>during a stay</i> ,	
15	San Carlos Inn should move for administrative relief,	
16	permit Johnson to conduct an expert-led site inspection	
17	and then brings a dispositive motion.	6
18	V. CONCLUSION	6
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1 **TABLE OF AUTHORITIES**

2 **Cases**

3	<i>Bennett v. United States</i> ,	
4	102 F.3d 486 (11th Cir. 1996)	4
5	<i>Chapman v. Pier 1 Imports (U.S.) Inc.</i> ,	
6	631 F.3d 939 (9th Cir. 2011)	6
7	<i>City of Mesquite v. Aladdin's Castle, Inc.</i> ,	
8	455 U.S. 283 (1982).....	7
9	<i>Feldman v. Pro Football, Inc.</i> ,	
10	419 F. App'x 381 (4th Cir. 2011)	11, 12
11	<i>Friends of the Earth, Inc. v. Laidlaw Env'tl. Servs. (TOC), Inc.</i> ,	
12	528 U.S. 167 (2000).....	1, 7, 12
13	<i>Gaylor v. Greenbriar of Dahlonega Shopping Ctr., Inc.</i> ,	
14	975 F. Supp. 2d 1374 (N.D. Ga. 2013)	9
15	<i>Grove v. De La Cruz</i> ,	
16	407 F. Supp. 2d 1126 (C.D. Cal. 2005)	11
17	<i>Holt v. United States</i> ,	
18	46 F.3d 1000 (10th Cir. 1995)	4
19	<i>Iron Arrow Honor Soc'y v. Heckler</i> ,	
20	464 U.S. 67 (1983)	10
21	<i>Jenkins v. United States Gas Corporation</i> ,	
22	400 F.2d 28 (5th Cir. 1998).....	10
23	<i>Modern Dev. Co. v. Navigators Ins. Co.</i> ,	
24	111 Cal. App. 4th 932 (2003)	10
25	<i>Moeller v. Taco Bell Corp.</i> ,	
26	816 F. Supp. 2d 831 (N.D. Cal. 2011)	9, 12, 13
27	<i>Molski v. M.J. Cable, Inc.</i> ,	
28	481 F.3d 724 (9th Cir. 2007)	5

1	<i>Nat'l Adver. Co. v. City of Miami,</i>	
2	402 F.3d 1329 (11th Cir.2005)	10
3	<i>Roberts v. Corrothers,</i>	
4	812 F.2d 1173 (9th Cir. 1987)	1, 4
5	<i>Santiago v. Miles,</i>	
6	774 F.Supp. 775 (W.D.N.Y. 1991)	10
7	<i>Sharp v. Rosa Mexicano, D.C., LLC,</i>	
8	496 F. Supp. 2d 93 (D.D.C. 2007)	8
9	<i>Sheely v. MRI Radiology Network, P.A.,</i>	
10	505 F.3d 1173 (11th Cir. 2007).....	10
11	<i>Steel Co. v. Citizens for a Better Env't,</i>	
12	523 U.S. 83 (1998)	10
13	<i>Sun Valley Gasoline, Inc. v. Ernst Enterprises, Inc.,</i>	
14	711 F.2d 138 (9th Cir. 1983)	5
15	<i>Tandy v. City of Wichita,</i>	
16	380 F.3d 1277 (10th Cir. 2004).....	7
17	<i>United States v. Concentrated Phosphate Export Ass'n,</i>	
18	393 U.S. 199 (1968).....	7
19	<i>United States v. W.T. Grant,</i>	
20	345 U.S. 629 (1953).....	10
21		
22		
23		
24		
25		
26		
27		
28		

MEMORANDUM OF POINTS AND AUTHORITIES

I. Preliminary statement

Johnson, a quadriplegic, has sued San Carlos Inn, claiming that it has inaccessible parking, inaccessible website booking options, and inaccessible guest rooms in violation of the Americans with Disabilities Act. In response, San Carlos Inn has filed a motion for judgment on the pleadings, contesting the facts and the law and arguing that some conditions have also changed, thereby mooting some claims. The motion should be denied as premature.

First, the motion has been filed in violation of the General Order 56 stay on all proceedings. Second, the motion asks the court to improperly resolve disputed facts where the question of jurisdiction is dependent on the resolution of factual issues going to the merits.¹ Here, the complaint's claim is lack of accessible parking, lack of accessible website, lack of accessible guestrooms. San Carlos challenges jurisdiction on the basis that *there is* accessible parking, accessible website booking, and there are accessible guestrooms. In such cases, the Rule 56 "summary judgment standard" applies and this current motion is premature until the plaintiff has had the opportunity to conduct discovery.²

¹ See *Roberts v. Corrothers*, 812 F.2d 1173, 1177 (9th Cir. 1987).

² Roberts, 812 F.2d at 1177.

1 **II. The motion for judgment on the pleadings or to dismiss
2 for lack of standing violates General Order 56.**

3 The motion for judgment on the pleadings and the motion to
4 dismiss violate both the spirit and letter of the stay imposed by General
5 Order 56. It is improper and must be denied. Pursuant to General Order
6 56, any case arising under the Americans with Disabilities Act is governed
7 by a strict process, designed to minimize costs and to get the parties to a
8 resolution. Under General Order 56, “All other discovery and proceedings
9 are STAYED unless the assigned judge orders otherwise.”³

10 This case asserts denial of a right of access protected by Title III of
11 the ADA, and thus, the case falls under General Order 56, which requires
12 the parties “to engage in a structured process designed to achieve early
13 compliance with the ADA while minimizing the adversarial litigation
14 process and concomitant fees.”⁴ General Order 56 automatically stayed
15 all litigation proceedings and most discovery during an approximately five
16 month period that starts with the filing of the complaint, runs through a
17 joint site inspection, and ends with mandatory mediation.⁵ And if a party
18 wishes to engage in discovery, motion work, or other proceedings, they can
19 file a motion for administrative relief.⁶

20 Here, the defendant has not filed for relief from the stay. The court
21 has not granted any relief from the stay. The motion to dismiss is filed in
22 direct violation of the stay order found in General Order 56. And this court
23 has had occasion to previously address such a situation. About five months
24 ago, this court denied a motion to dismiss on the basis that: “The stay
25 means that the ordinary course of litigation, including motions practice,

26 ³ General Order 56, p ¶ 2 (penultimate sentence).

27 ⁴ *Cullen v. Netflix, Inc.*, 2011 WL 13177618, at *1 (N.D. Cal. 2011).

28 ⁵ General Order 56 ¶¶ 2-8.

⁶ General Order 56, ¶ 9.

1 cannot proceed until the required process is completed. Here, the parties
 2 have not completed the required site inspection and mediation, and the
 3 Court has not issued an order granting relief from the stay imposed by
 4 General Order 56. Accordingly, Defendants' motion to dismiss was
 5 inappropriately filed.”⁷

6 The fact that San Carlos Inn claims that its motion implicates subject
 7 matter jurisdiction—something the court must always consider—cannot
 8 withstand scrutiny. The case arises under the ADA. The court has subject-
 9 matter jurisdiction over this federal statutory claim. “When a plaintiff
 10 makes a plausible argument that a federal statute creates his right to relief,
 11 the district court has subject-matter jurisdiction over that complaint.”⁸
 12 Standing, while related to jurisdiction for practical purposes, is different.
 13 Thus, “a dismissal for lack of statutory standing is properly viewed as a
 14 dismissal for failure to state a claim” under Rule 12(b)(6).⁹ Moreover, the
 15 failure to allege a cognizable legal theory does not implicate subject-matter
 16 jurisdiction:

17 It is firmly established in our cases that the absence of a valid
 18 (as opposed to arguable) cause of action does not implicate
 19 subject-matter jurisdiction, i.e., the courts’ statutory or
 20 constitutional power to adjudicate the case . . . jurisdiction . . .
 21 is not defeated . . . by the possibility that the averments might
 22 fail to state a cause of action on which petitioners could
 23 actually recover. Rather, the district court has jurisdiction if
 24 the right of the petitioners to recover under their complaint
 25 will be sustained if the laws of the United States are given one
 26 construction and will be defeated if they are given another.

27 [Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 89,
 28 (1998) (internal cites and quotes removed).]

26 ⁷ *Gonzalez v. Yoo, et al.*, 3:19-cv-00734-SK (N.D., Cal. May 21, 2019), Docket
 27 Entry 20, p. 1, lines 21-25.

28 ⁸ *Lanfear v. Home Depot, Inc.*, 536 F.3d 1217, 1221 (11th Cir. 2008).

⁹ *See Harris v. Amgen, Inc.*, 573 F.3d 728, 732, fn. 3 (9th Cir. 2009).

1 Here, if Johnson's construction of the ADA has merit, then he can
 2 recover. This court, therefore, has subject-matter jurisdiction. San Carlos'
 3 motion arguing against standing is properly brought as a Rule 12(b)(6)
 4 motion to dismiss for failure to state a claim and not as a motion
 5 challenging subject-matter jurisdiction under Rule 12(b)(1). And it is
 6 inappropriate to bring this motion during the stay.

7

8 **III. Not only is should the Rule 12(b)(1) motion be treated as
 9 a Rule 12(b)(6) motion (stayed by General Order 56) but
 10 even if the stay were not in effect, this motion would be
 premature.**

11 San Carlos' motions are based entirely on the claim that their
 12 parking lot, website and guest rooms comply with the ADA and, therefore,
 13 there is nothing for the court to enjoin under the federal statute. While it is
 14 appropriate in certain circumstances to bring a motion under Federal Rule
 15 of Civil Procedure 12(b)(1) introducing extrinsic facts and challenging
 16 federal court jurisdiction, it is not appropriate in the present case with the
 17 present motion.

18 The problem with these motions are that they very question this
 19 Court needs to address in determining whether it has jurisdiction is the
 20 same question that must be answered to determine the merits of the case
 21 and whether Johnson can prove his claims. Johnson alleges that the San
 22 Carlos Inn does not have accessible parking, does not have accessible
 23 website booking opportunities and does not have accessible guestrooms in
 24 violation of federal law. If that is true, Johnson wins and can obtain the
 25 injunction. If that is wrong, Johnson loses. That is the case. The ultimate
 26 question in this case is whether the parking lot/website/guest rooms
 27 comply with accessibility laws. San Carlos Inn, however, asks this Court to

1 answer that very question in determining whether it has jurisdiction. This
 2 is improper.

3 A court should not resolve disputed facts where the question of
 4 jurisdiction is dependent on the resolution of factual issues going to the
 5 merits.¹⁰ As the Ninth Circuit has held, “A district court may hear evidence
 6 and make findings of fact necessary to rule on the subject matter
 7 jurisdiction question prior to trial, *if the jurisdictional facts are not*
 8 *intertwined with the merits.*”¹¹ In such cases, the Rule 56 “summary
 9 judgment standard” applies.¹² The question of jurisdiction and the merits
 10 of an action are considered intertwined where the same statute provides
 11 the basis for both the subject matter jurisdiction of the federal court and
 12 the plaintiff’s substantive claim for relief.¹³ That is the situation that exists
 13 in the present case. San Carlos Inn can and should bring its claims in the
 14 form of a Rule 56 motion when the stay is lifted.

15 Additionally, district courts are permitted to convert such a motion
 16 to a summary judgment motion but given the fact that this case is at its
 17 earliest stage, discovery has not even begun, there is a discovery stay in
 18 effect, Johnson has not had a chance to conduct a site inspection to assess
 19 the claimed new changes, a summary judgment motion would be
 20 premature and unfair. Had Johnson been given notice of a motion for
 21 summary judgment, he would be in a position to file a Rule 56(d) request
 22 for continuance or denial.

23
 24¹⁰ *Roberts*, 812 F.2d at 1177.

25¹¹ *Rosales v. United States*, 824 F.2d 799, 803 (9th Cir. 1987).

26¹² *Roberts*, 812 F.2d at 1177; *see also Careau Grp. v. United Farm Workers of Am.,*
 27 *AFL-CIO*, 940 F.2d 1291, 1293 (9th Cir. 1991).

28¹³ *Sun Valley Gasoline, Inc. v. Ernst Enterprises, Inc.*, 711 F.2d 138, 139 (9th Cir.
 1983).

1 **IV. Rather than this improper attempt to get the court to
2 make factual findings or resolve disputed issues during
3 a stay, San Carlos Inn should move for administrative
4 relief, permit Johnson to conduct an expert-led site
5 inspection and then brings a dispositive motion.**

6 It is fundamentally unfair for San Carlos Inn to be permitted to
7 ignore the litigation stay and bring what amounts to a disguised summary
8 judgment motion, arguing facts and legal theories, supported by
9 declarations from an expert and a hotel employee while Johnson is not
10 permitted to develop his case or bring a motion for summary judgment or,
11 even, to have a site inspection to confirm or rebut the claims of the defense
12 expert.

13 The appropriate procedure is for San Carlos Inn to file a motion,
14 explaining to the court seeking administrative relief so that it can
15 prosecute these motions. But, in any event, Johnson should be afforded the
16 opportunity to conduct a site inspection.

17 **V. CONCLUSION**

18 Johnson respectfully requests this Court deny the motions.

19 Dated: November 4, 2014

20 CENTER FOR DISABILITY ACCESS

21 /s/ Russell Handy

22 By: _____

23 Russell Handy, Esq.

24 Attorneys for Plaintiff